

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GERALD GRADIA, as Personal Representative
of the Estate of JAY GRADIA, Deceased,

Plaintiff,

vs.

Civ. No. 02-286 WWD/LFG ACE

ERIC TANNER and KLLM INCORPORATED,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendants' Motion in Limine to Exclude Evidence Regarding the Galeridge (sic.) Construction Salary Proposal [docket no. 33]. Plaintiff is prepared to offer evidence which if believed would indicate that Alfred M. Galedrige, of Galedrige Construction, had agreed with Plaintiff's deceased to employ Plaintiff's deceased at a base annual salary of \$80,000 plus certain other fringe benefits and commissions. Defendants argue that the proof of the existence of such a contract fails; that Plaintiff's deceased had no experience which would support such employment; and that the probative value of the evidence in support of such contract would be outweighed by the prejudice to Defendants. Defendants also argue that any earning capacity which might be inferred from the existence of the contract would be too speculative to be considered by the jury. I disagree. There is no question but that Defendants can marshal a number of arguments against the existence of the "contract" or the utilization of the contract in computing damages. This is something that can be covered

adequately in cross examination of Plaintiff's expert and other witnesses. I decline to rule as a matter of law that the somewhat improbable fact situation presented by Plaintiff did not occur. Determining the true facts herein involved in the province of the jury.

WHEREFORE,

IT IS ORDERED that Defendants' Motion in Limine to Exclude Evidence Regarding the Galeridge (sic.) Construction Salary Proposal [docket no. 33] be, and it is hereby, DENIED.


UNITED STATES MAGISTRATE JUDGE